

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

Applications for Consent to the  
Transfer of Control of Licenses and  
Section 214 Authorizations from

AMERITECH CORPORATION,  
Transferor

To

SBC COMMUNICATIONS, INC.,  
Transferee

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CC Docket No. 98-~~14~~**RECEIVED**  
JUL 26 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

REPLY COMMENTS OF  
TEXAS RURAL MUNICIPAL ELECTRIC UTILITIES

July 26, 1999

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List A B C D E

<b>In the Matter of</b>	§	
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<b>Applications for Consent to the</b>	§	
<b>Transfer of Control of Licenses and</b>	§	
<b>Section 214 Authorizations from</b>	§	<b>CC Docket No. 98-141</b>
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<b>AMERITECH CORPORATION,</b>	§	
<b>Transferor</b>	§	
	§	
<b>To</b>	§	
	§	
<b>SBC COMMUNICATIONS, INC.,</b>	§	
<b>Transferee</b>	§	

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## **I. EXECUTIVE SUMMARY**

The bulk of the comments filed last week were by CLECs. It is apparent that their focus is still upon urban/suburban markets. They found nothing wrong with SBC/Ameritech only committing to provide local services competition out-of-region in metropolitan markets. The CLECs also found nothing wrong with SBC deploying DSL services only in urban/suburban wire centers.<sup>1</sup> Paragraph 20 of the Conditions did not spell out when or if rural wire centers would receive DSL or other Advanced Services.

The CLECs ignore the mandates of Sections 254(a) and 706(a) in making competitive services — especially advanced services — available to all Americans in all regions. Somehow the CLECs and the Applicants have concluded that urban/suburban interest equals the public interest. Certainly the public interest is not served when the country is divided into the competitive services haves and have-nots or the DSL haves and have-nots. However, this is just the sort of bias expressed in the Proposed Conditions.

It is also apparent that the Applicants and the CLECs have totally forgotten about the need for local services competition In-Region but outside the service territory of SBC and its principal LEC subsidiary, Southwestern Bell Telephone Company ("SWBT"). The ratepayers of Texas have been a key component in providing the revenue to support the SBC/Pacific Telesis, SBC/SNET and the SBC/Ameritech mergers. On June 15, 1999 SWBT reported to the Public Utility Commission of Texas that on a "total company" basis SWBT's "Return on

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<sup>1</sup> See Comments of Texas Rural Municipal Electric Utilities at 10-11.

Average Common Equity" was 48.62% for 1998.<sup>2</sup> SWBT has committed to spend \$3 billion on the Out-of-Region markets yet SWBT is not willing to commit one dime to providing local services competition for the benefit of rural Texas ratepayers outside its service territory.

At the very least the Commission should insist on a Rural Strategy and not just a National Local Strategy as envisioned by the Applicants. Part of the Rural Strategy should be a requirement of SWBT to provide local services in rural exchanges outside its service territory in Texas, as well as a meaningful commitment to work toward the removal of state prohibitions against rural municipal electric systems providing telecommunications services.

## **II. Comments by CLECs<sup>3</sup> Do Not Address Failure of Conditions to Promote Out-of-Service Territory Competition in Rural Areas**

### **A. Comments by CLECs Fail to Point Out That Out-of-Region Conditions Only Apply to Metropolitan Areas**

Sprint<sup>4</sup>, Time Warner<sup>5</sup> and AT&T<sup>6</sup> are quite vigorous in arguing that the Out-of-Region

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<sup>2</sup> Attachment A. See 1998 TELECOMMUNICATIONS UTILITIES ANNUAL EARNINGS REPORT PURSUANT TO SUBST. R. 26.73(b), Project No. 20469, Public Utility Commission of Texas, filed on June 15, 1999.

<sup>3</sup> CLECs were by far the largest group of commenters, they include: AT&T Corp, CTC Communications, Association for Local Telecommunications Services, Time Warner Telecom, Winstar Communications, Allegiance Telecom, Williams Communications, NEXTLINK Communications, Competitive Telecommunications Association, GST Telecom et. al., Northpoint Communications, Cable & Wireless USA and Sprint Communications Company.

<sup>4</sup> Sprint Comments at 5.

<sup>5</sup> Time Warner Comments at 17.

<sup>6</sup> AT&T Comments, Appendix A at 104-105.

Conditions<sup>7</sup> are largely illusory when it comes to promoting residential local services competition in the thirty (30) markets selected by SBC. Yet, after devoting considerable attention to the Out-of-Region Conditions, the CLECs fail to point out the most obvious flaw; namely, that the Out-of-Region Conditions are limited solely to urban and suburban markets. There is a complete absence of any sort of commitment to rural markets. Congress was explicit about mandating the benefits of competition be shared with rural consumers. These mandates manifested themselves in Sections 254(a) and 706(a) of the Telecommunications Act of 1996 ("the Act"). Without these mandates competitors would cherry pick customers and markets. SBC was quite candid on why it chose particular out-of-region markets.<sup>8</sup>

"Our plan is to first follow our large customers into National-Local markets with a network which will then allow us to begin competing for other business and residential customers," said Carter<sup>9</sup>, who noted that 224 of the Fortune 500 companies are headquartered in either SBC or Ameritech states. "Those 224 companies operate more than 4,700 facilities in Boston, Miami and Seattle alone, spending nearly \$125 annually on local and long distance service. These are terrific initial markets for us."

A National Local Strategy, which is premised on following Fortune 500 companies, must be balanced with a Rural Strategy if the mandates of Sections 254(a) and 706(a) are to be satisfied. It is obvious that Congress was not interested in some customers having access to the Information Superhighway while other customers have access to the Information Dirt Road.

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<sup>7</sup> Conditions at ¶ 61.

<sup>8</sup> SBC New Release, February 4, 1999. See  
<[www.sbc.com/PublicAffairs/NewMarkets/NewsCoverage/01121098.html](http://www.sbc.com/PublicAffairs/NewMarkets/NewsCoverage/01121098.html)>

<sup>9</sup> Stephen Carter, SBC President of Strategic Markets.

**B. Comments by CLECs Fail to Point Out That There Is No Condition Aimed At Requiring SBC/Ameritech To Compete In-Region Outside Its Service Territory**

While CLECs discuss the Out-of-Region Conditions, there is no discussion by them of the failure by SBC to compete In-Region outside its existing service territory. This is particularly glaring in the case of SWBT, especially in Texas. While SWBT is the incumbent LEC in Texas' urban areas, except for San Angelo and Bryan-College Station, it is not the incumbent LEC for most rural exchanges.<sup>10</sup> SBC is willing to spend \$3 billion<sup>11</sup> to implement its National Local Strategy but unwilling to spend a dime to provide competition in rural exchanges in Texas outside its service territory.

**III. Comments By CLECs Fail To Discuss Removal Of Barriers To Entry For Rural Markets**

Sprint suggests numerous changes to the Proposed Conditions in order to remove potential barriers to entry for competitors of SBC, especially with regard to the provisioning of advanced services.<sup>12</sup> Likewise, Comments of the Association for Telecommunications Services (ALTS) suggest that the interim rates for conditioning DSL loops are so excessive as to inhibit competitors from offering DSL services.<sup>13</sup> Time Warner complains that the structural

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<sup>10</sup> Attachment B.

<sup>11</sup> Attachment C.

<sup>12</sup> Sprint Comments at 8-19.

<sup>13</sup> ALTS Comments at 14.

separation for advanced services will harm instead of promoting competition.<sup>14</sup> The Competitive Telecommunications Association (CompTel) concluded that the UNE related conditions are anticompetitive and constitute barriers to entry in business markets.<sup>15</sup>

While one or more CLECs complain about almost every facet of the Proposed Conditions as being anticompetitive or a barrier to entry, there is not one word about the absolute prohibition imposed by a few states, like Texas, on allowing municipal electric systems<sup>16</sup>, primarily rural systems, from becoming CLECs. Removal of such prohibitions is likely the only way competition will develop for some rural communities. Once again this failure can only be attributed to the Lemming-like effort for CLECs to focus on urban and suburban markets and totally ignore rural markets.

In the recently concluded session of the Texas Legislature HB 1777 was enacted into law:<sup>17</sup> HB 1777 added Chapter 283 to the Local Government Code. Chapter 283 is entitled "MANAGEMENT OF PUBLIC RIGHT-OF-WAY USED BY TELECOMMUNICATIONS PROVIDER IN MUNICIPALITY." The purpose of Chapter 283 was clearly set forth, as follows:

Sec. 283.001 STATE POLICY; PURPOSE. (a) It is the policy of this state to:

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<sup>14</sup> Time Warner Comments at 8-12.

<sup>15</sup> CompTel Comments at 7-10.

<sup>16</sup> TEX. UTILITIES CODE §54.202 (Wet Supp. 1999).


<sup>17</sup> HB 1777, 76<sup>th</sup> Regular Session, Texas Legislature (1999). See <[www.capitol.state.tx.us/cgi-bin/tlo/textframe.cmd?LEG=76&SESS=R&Chamber=H&BILLTYPE=B&BILLSUFFIX=01777&VERSION=5&TYPE=B](http://www.capitol.state.tx.us/cgi-bin/tlo/textframe.cmd?LEG=76&SESS=R&Chamber=H&BILLTYPE=B&BILLSUFFIX=01777&VERSION=5&TYPE=B)>.

- (1) encourage competition in the provision of telecommunications services;
- (2) reduce the barriers to entry for providers of services so that the numbers and types of services offered by providers continue to increase through competition;
- (3) ensure that providers of telecommunications services do not obtain a competitive advantage or disadvantage in their ability to obtain use of a public right-of-way within a municipality; and
- (4) fairly reduce the uncertainty and litigation concerning franchise fees.

HB 1777 was the result of an agreement between municipalities, Southwestern Bell, GTE and CLEC representatives. The Legislation addressed the concerns of CLECs and incumbent LECs about potential discrimination and barriers to entry imposed by municipal right-of-way ordinances. Yet, while barriers to entry for CLECs and incumbent LECs were being reduced or eliminated, the prohibition against rural municipal electric systems providing telecommunications services remains. This is the most blatant form of discrimination against a potential competitor. As a first step, the Commission should condition the merger on SBC's agreement to work in a meaningful way toward the elimination of the prohibition as suggested by the Texas Rural Municipal Electric Utilities in their Comments filed on July 19, 1999.


Respectfully submitted,

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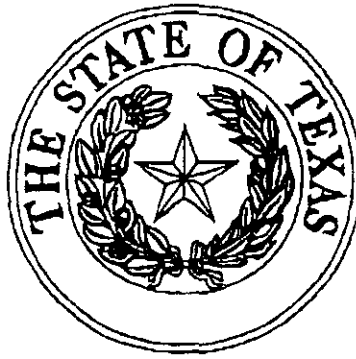
By:   
JIM BOYLE  
State Bar No. 02795000  
Attorney for the Texas Rural Municipal Electric  
Utilities

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent via hand delivery or U.S. Mail to all parties of record on this 26th day of July, 1999.

  
Jim Boyle





TELEPHONE UTILITIES

EARNINGS REPORT

OF

SOUTHWESTERN BELL TELEPHONE COMPANY  
(exact legal name of utility)

TO THE

PUBLIC UTILITY COMMISSION OF TEXAS

FOR THE

Twelve Months Ending December 31, 1998

Check one:

This is an original submission ☒ [X]  
This is a revised submission ☐ [ ]

Date of submission: June 15, 1999

Company Name: Southwestern Bell Telephone Company  
 CCN: 40079  
 Reporting period: 12 Months Ended December 31, 1998

Schedule XIII  
 06/15/99

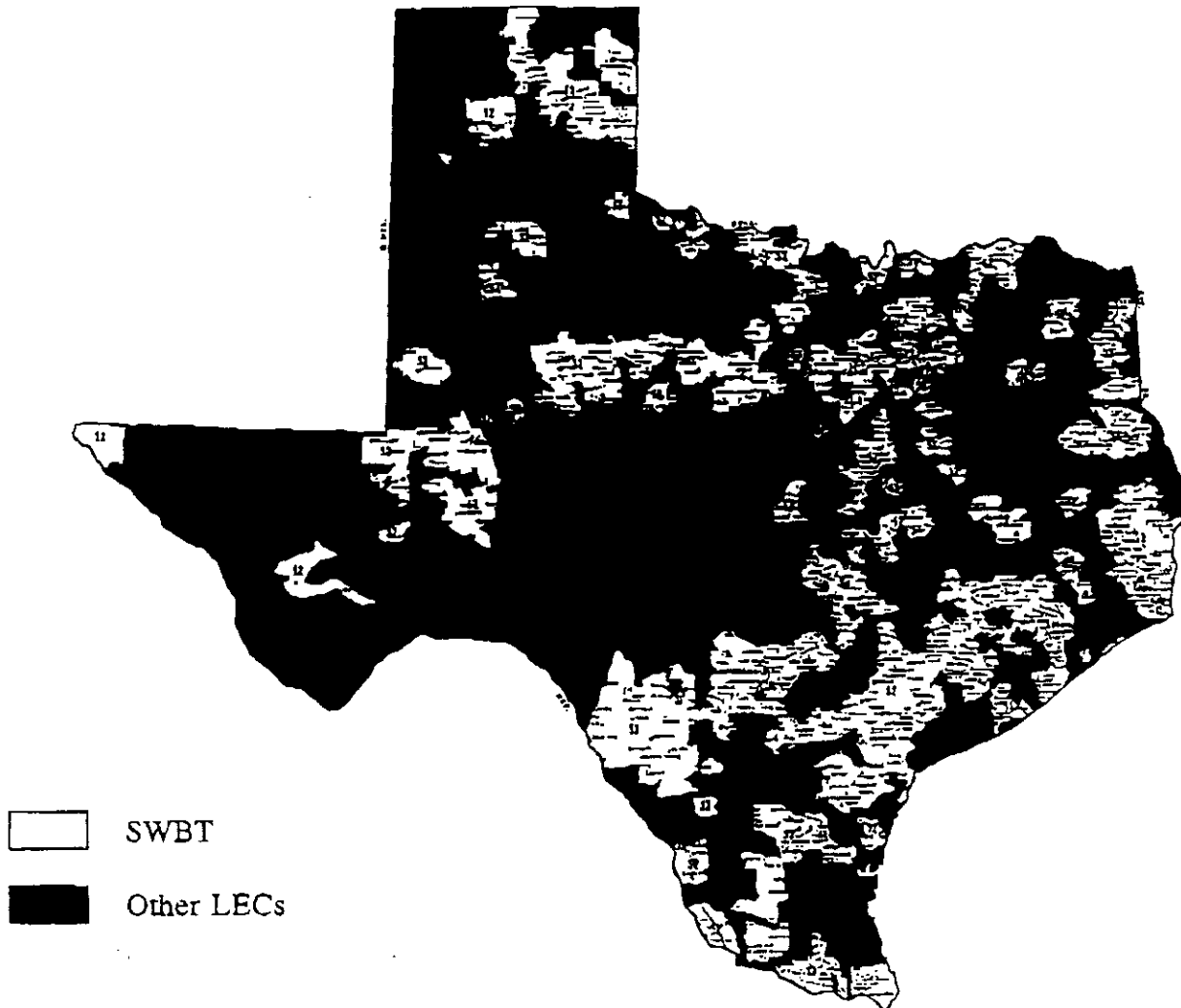
Historical Financial Ratios  
 (Large Telephone Utilities)  
 (Total Company Basis)

Line	Fiscal Year:	1994	1995	1996	1997	Monitoring Period
1	Total Debt as a Percent	47.60%	65.06%	64.24%	64.44%	65.48%
2	of Total Capital					
3						
4	TPUC as a Percent of Net Plant	1.47%	2.20%	2.66%	2.72%	1.98%
5						
6	Construction Expenditures as a	16.03%	22.72%	28.56%	31.21%	27.15%
7	Percent of Total Capital					
8						
9	Pre-Tax Interest Coverage	5.38	5.86	7.18	6.03	7.10
10						
11	Fixed Charge Coverage	5.13	5.56	6.70	5.60	6.52
12						
13	Funds From Operations Interest	N/A	N/A	N/A	10.01	8.97
14	Coverage					
15						
16	Net Cash Flow to Total Debt	35.83%	42.96%	46.61%	37.63%	47.00%
17						
18	Cash Coverage of Common Dividends	1.63	1.56	1.52	1.27	1.60
19						
20	IDC as a Percent of	1.74%	-0.91%	1.53%	2.26%	1.19%
21	Net Income for Common					
22						
23	Return on Average Common Equity	19.93%	-42.04%	49.30%	40.20%	48.62%

[X] Indicate here if footnote or comment relating to this schedule is included on Supp Sched 5.  
 \*Version of March, 1999

B

# SWBT REFUSES TO COMPETE OUTSIDE ITS SERVICE TERRITORY IN TEXAS







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COMMUNICATIONS TODAY [12/10/98]

## SBC Tries To Change Attitudes About Its Merger

SBC Communications [SBC] faces many hurdles in its effort to merge with Ameritech [AIT], not least of which is the attitude that its "national-local strategy" is just a pretty wrapper designed to hide an undesirable deal.

Changing that attitude is one of the goals of the SBC executives in Washington this week to meet with regulators at the FCC and the U.S. Department of Justice (DoJ), and lawmakers and their aides on Capitol Hill.

*The national-local strategy is like a dream come true for regulators. SBC promises to compete in 30 local markets outside of its region - and not just for business customers, but for residential customers, too.*

The national-local strategy is like a dream come true for regulators. SBC promises to compete in 30 local markets outside of its region - and not just for business customers but for residential customers, too.

But some regulators suspect SBC conceived its national-local strategy only after it appeared the \$56 billion merger would be a hard sell. "I think there are some people who felt that way," said Stephen Carter, SBC's president of strategic markets, who is heading the company's Washington road show.

Perhaps SBC made a mistake by concealing its strategy and announcing it only after the company made its bid for Ameritech, Carter said yesterday (12/9).

Carter's message is simple: "The national-local strategy is not a means to a merger. The merger is a means to the national-local strategy."

The strategy itself also has skeptics. If it makes sense for SBC-Ameritech to compete in 30 out-of-region markets, critics wonder,

why aren't the separate companies already competing? "The question 'Why can't you do it in a smaller way' often comes up," Carter said.

Small competitive local exchange carriers (CLECs) often start in just a handful of markets and branch out from there. Nothing is stopping SBC from starting a CLEC division and entering new markets one at a time. But SBC and Ameritech executives don't want to operate that way. CLECs usually start out losing money. Investors in Bell operating companies (BOCs) aren't used to losses.

CLECs operate in niches, offering a limited number of services in a small area. SBC is not a niche player. It wants to be a full-service provider for large corporations that might have offices in several cities. SBC wants to be in all of the cities where its customers have offices. SBC is a big company and it wants to take a big bite. An expansion that large requires a partner the size of Ameritech.

SBC is planning on merger approval in the middle of next year, after which it would begin installing switches and other facilities to offer out-of-region service. The company plans to use unbundled loops to reach customers and to lease transport facilities. It hopes to avoid entering markets through resale. The company is already building a management team to coordinate its CLEC markets.

Even before the merger is approved, SBC will invest tens of millions of dollars in its national-local strategy - money that will be lost if the merger is denied, Carter said. If approval is granted, implementing the strategy will cost about \$3 billion.

Another key component of the national-local strategy is the ability to offer long-distance. SBC expects to win long-distance approval for at least part of its territory by mid-1999. If it doesn't, Carter said, the company would have to delay its entry into out-of-region markets.

Of the three large mergers now before the FCC, SBC-Ameritech seems like it will be the hardest to sell. In the mergers of AT&T [T] and Tele-Communications [TCOM] (TCL) and GTE [GTE] and Bell Atlantic [BEL], the merging partners are different kinds of companies and will have an easier time proving that they are not potential competitors.

In the case of SBC-Ameritech, opponents have drawn attention to Ameritech's 1996 plans to compete for SBC customers in Missouri (CT, 10/16). Lawmakers have suggested that the FCC should require more than a mere promise that the companies will compete. They want competition to be enforced as a pre-condition of the merger's approval.